



**[4910-22-P]**

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**Special Experimental Project (SEP-16) to Evaluate Proposals for Delegation of FHWA Responsibilities to States**

**AGENCY:** Federal Highway Administration (FHWA), U.S Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The FHWA is expanding the Special Experimental Project (SEP-16), originally announced in a *Federal Register* notice published on September 20, 2018. The SEP-16 permits testing and evaluation of delegations to States of FHWA program-level actions. The FHWA is expanding SEP-16 to allow experimentation with delegation of FHWA responsibilities related to project delivery. This new SEP-16 scope includes potential experimentation with responsibilities not previously considered subject to assumption under Stewardship and Oversight Agreements between FHWA and State departments of transportation (State DOT).

**DATES:** This expanded SEP-16 Project is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** For technical information: Peter Stephanos, Office of Stewardship, Oversight, and Management, (202) 366-0027; for legal information: Janet Myers, Office of the Chief Counsel (HCC), (202) 366-2019, 1200 New Jersey Avenue, SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., ET, Monday through Friday, except Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **Electronic Access**

An electronic copy of this notice may be downloaded from the Federal Register's home page at: <http://www.archives.gov>; the Government Publishing Office's database at: <https://www.gpo.gov/fdyss/>; or the specific docket page at: [www.regulations.gov](http://www.regulations.gov).

### **Background**

For information on the background and legal authority for SEP-16 pursuant to 23 U.S.C. 502(b), please refer to the *Federal Register* notice announcing SEP-16, published on September 20, 2018 (83 FR 47674) (SEP-16 notice).

After announcing SEP-16, FHWA received expressions of interest from States wishing to experiment with types of delegation not expressly included within the scope of the SEP-16 notice. Several of the requests related to actions that, to date, FHWA has not treated as subject to assumption under 23 U.S.C. 106(c) or other authorities.

After consideration, FHWA concluded that expanding SEP-16 into a general authority for experimentation with delegation to States of FHWA program/project authorities could provide useful information for future determinations about administration of the Federal-aid Highway Program (FAHP). This supplemental notice expands SEP-16 to allow experimentation with delegations of authority for FAHP program/project actions where FHWA determines such experimentation is appropriate.

The scope of permissible experimentation is subject to the conditions described in the SEP-16 notice (83 FR 47675) except as modified in this notice. This expanded authority may be used to experiment with project development, construction, and post-construction actions relating to a specific project, group of projects, or a program. The

SEP-16 experimental authority continues to exclude from testing and evaluation the Federal decisions relating to eligibility, obligation, reimbursement, authorization, and compliance. In addition, SEP-16 experimental authority will not be available to test delegations relating to the environmental review process, as there are statutes and regulations that expressly address assignment of FHWA's environmental responsibilities (*see, e.g.,* 23 U.S.C. 327).

This expansion of SEP-16 will allow FHWA to understand more fully the potential implications of delegating FAHP decisions not previously subject to assumption or delegation under 23 U.S.C. 106(c) and other authorities. The lessons learned from SEP-16 will aid FHWA in developing comprehensive policies and inform stakeholders if the delegation of FHWA authorities is appropriate.

To facilitate public access to SEP-16 information, all SEP-16 proposals, workplans, and reports will be posted on a public facing Web site.<sup>1</sup>

### **Solicitation of Letters of Interest**

This notice announces the expanded SEP-16 and requests Letters of Interest for experimentation with FHWA actions relating to program/project delivery. Entities eligible to submit letters ("Applicants") are State DOTs as defined in 23 U.S.C. 101. Letters of Interest, which should be submitted to the appropriate FHWA Division Office, initiate the application process described below. The Letter of Interest should include a high-level description of the Applicant's proposal, reasons for wanting to assume the authority, and the anticipated resulting improvements to program/project delivery. Ideally, the Applicant will quantify the resulting improvements in terms of time and/or cost savings. The Applicant should include enough detail to allow FHWA to determine

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<sup>1</sup> <https://www.fhwa.dot.gov/innovativeprograms/sep-16/>

how the proposal deviates from current law (including regulations) and practice, and how the actions covered by the proposal are addressed in current policy. The Letter of Interest should reference the specific legal authority(ies) under Title 23 being requested for delegation. Further, the Applicant should provide specific examples that demonstrate experience with delegation in the affected area(s), or in areas the Applicant deems similar in nature, if applicable. The Applicant should describe the level of collaboration conducted so far with relevant FHWA Division or program offices about the proposal.

### **Application Process**

The FHWA is retaining the application process announced in the SEP-16 notice which is repeated here for reference. The application process is three-tiered, with each step developing more specifics of the proposed assumption(s) for FHWA consideration and feedback. The FHWA will evaluate each step to determine whether a proposal falls within the scope of section 502(b) and is appropriate for this experimental process before inviting and working with an Applicant to proceed to the next step for more detailed proposal development.

The first step in the application process is the Letter of Interest described above. The FHWA will acknowledge receipt of the Letter of Interest and provide an anticipated timeframe for initially evaluating the proposal and providing a formal response. After review of the proposal, FHWA will provide a formal response that will either request the Applicant to proceed with submitting a Concept Paper, or provide FHWA's explanation for not advancing the proposal.

If a Concept Paper is requested, the Applicant should submit to the appropriate FHWA Division Office a narrative further detailing the Applicant's proposal. This

Concept Paper should not exceed 5 pages and be formatted single-spaced, using a standard 12-point font with 1-inch margins. Charts, tables, and other items may also be submitted as attachments to supplement the narrative and do not count toward the 5-page limit. The Concept Paper should demonstrate that the State has the necessary laws, regulations, controls, and resources in place to assume the Federal role for the responsibilities requested. If applicable, the Applicant may use experience with assumption of authorities under 23 U.S.C. 106(c) and other authorities to demonstrate readiness to assume the requested responsibilities. If any necessary piece is missing, the Applicant should outline a plan and timeline anticipated to put pieces in place. In addition, the Concept Paper should detail supporting analysis for the anticipated program/project delivery improvements and consider a risk assessment of the expected impact the assumption of authority may have on the State's program – specifically on resources, processes, and stakeholders – and include measures the State would use to ensure the responsibilities are carried out in accordance with Federal requirements. The Concept Paper should also summarize any preparation the Applicant may need to make if the experiment is approved and the time necessary for that preparation (e.g., provide training for staff, make needed changes to procedures, organization charts). The FHWA will evaluate the Concept Paper, and either request the Applicant to proceed to the Detailed Proposal stage, or provide an explanation for not advancing the request.

Since the requirements for the Detailed Proposal will vary depending on the complexity of the proposed delegation and the results of FHWA's evaluation of the Concept Paper, the appropriate FHWA Division will coordinate with the Applicant in preparing the Detailed Proposal. At a minimum, the Applicant's Detailed Proposal

should: 1) Propose a duration for conducting the experiment, including a timeline for any transition activities; 2) identify key personnel and contacts with proposed roles and responsibilities; and 3) recommend an Evaluation Plan with reporting mechanisms, performance measures, goals, and other evaluation criteria, and frequency of reviews. To provide consistency among the SEP-16 experiments, FHWA will provide the Applicant certain performance measures and evaluation criteria common to all SEP-16 Evaluation Plans.

Should FHWA decide to proceed with the experiment, FHWA and the Applicant will enter into a memorandum of understanding and develop a workplan for the experiment.

## **Conclusion**

The FHWA is committed to continuing its transition to a risk-based approach to stewardship and oversight of the FAHP. To this end, SEP-16 is designed to provide FHWA with a better understanding of the implications of allowing States to assume program/project authorities currently exercised by FHWA. This notice supplements the SEP-16 notice published on September 20, 2018, by expanding SEP-16 to allow experimentation with delegation of FHWA authorities relating to program and project delivery, and amending the application process to reflect this expansion.  
(Authority: 23 U.S.C. 315 and 502).

**Nicole R. Nason,**  
*Administrator,*  
*Federal Highway Administration.*

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